



General Assembly

January Session, 2003

Raised Bill No. 1165

LCO No. 4920

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING CLAIMS AGAINST THE STATE AND SERVICE OF PROCESS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4-158 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2003*):

3 [(a) The Claims Commissioner may approve immediate payment of
4 just claims not exceeding seven thousand five hundred dollars. The]

5 (a) The Claims Commissioner may (1) order that a claim be denied,
6 (2) order immediate payment of a just claim in an amount not
7 exceeding fifty thousand dollars, (3) recommend to the General
8 Assembly payment of a just claim in an amount exceeding fifty
9 thousand dollars, or (4) authorize a claimant to sue the state, as
10 provided in section 4-160, as amended by this act.

11 (b) Any person who has filed a claim for more than seven thousand
12 five hundred dollars may request the General Assembly to review a
13 decision of the Claims Commissioner (1) ordering the denial of the
14 claim pursuant to subdivision (1) of subsection (a) of this section,

15 including dismissing or denying a claim that requests permission to
16 sue the state, or (2) ordering immediate payment of a just claim in an
17 amount not exceeding fifty thousand dollars pursuant to subdivision
18 (2) of subsection (a) of this section.

19 (c) The Attorney General may request the General Assembly to
20 review any decision of the Claims Commissioner pursuant to
21 subdivision (2) of subsection (a) of this section ordering immediate
22 payment of a just claim in an amount exceeding seven thousand five
23 hundred dollars.

24 (d) A request for review shall be in writing and filed with the Office
25 of the Claims Commissioner not later than twenty days after the date
26 the person requesting such review receives a copy of the decision. If a
27 request for review is filed by the Attorney General pursuant to
28 subsection (c) of this section, the clerk of the Office of the Claims
29 Commissioner shall give written notice to the claimant that the
30 Attorney General has requested the General Assembly to review the
31 decision and that the General Assembly may confirm, modify or vacate
32 the decision or remand the claim to the Claims Commissioner. The
33 filing of such request shall automatically stay the decision of the
34 Claims Commissioner.

35 (e) The Claims Commissioner shall submit each claim for which a
36 request for review is filed pursuant to this section to the General
37 Assembly pursuant to section 4-159, as amended by this act.

38 (f) If the Claims Commissioner orders immediate payment of a just
39 claim in an amount not exceeding fifty thousand dollars pursuant to
40 subdivision (2) of subsection (a) of this section and a request for review
41 is not timely filed pursuant to subsection (b) or (c) of this section, the
42 clerk of the Office of the Claims Commissioner shall deliver to the
43 Comptroller a certified copy of the Claims Commissioner's order and
44 the Comptroller shall make payment from such appropriation as the
45 General Assembly may have made for the payment of claims or, in the
46 case of contractual claims for goods or services furnished or for

47 property leased, from the appropriation of the agency which received
48 such goods or services or occupied such property. [Within]

49 (g) Not later than five days after the convening of each regular
50 session, the Claims Commissioner shall report to the General
51 Assembly on all claims decided pursuant to this section.

52 [(b) Any person who, having filed a claim for more than seven
53 thousand five hundred dollars, wishes to protest an award of the
54 Claims Commissioner under the provisions of this section may waive
55 immediate payment and his claim shall be submitted to the General
56 Assembly under the provisions of section 4-159. Such waiver shall be
57 in writing and shall be filed with the Claims Commissioner within ten
58 days after the claimant receives a copy of the order approving
59 payment.]

60 Sec. 2. Section 4-159 of the general statutes is repealed and the
61 following is substituted in lieu thereof (*Effective October 1, 2003*):

62 [After hearing, the Claims Commissioner shall make his
63 recommendations to the General Assembly for the payment or
64 rejection of amounts exceeding seven thousand five hundred dollars.
65 Within]

66 (a) Not later than five days after the convening of each regular
67 session and at such other times as the speaker of the House of
68 Representatives and president pro tempore of the Senate may desire,
69 the Claims Commissioner shall submit [such recommendations] to the
70 General Assembly (1) all claims for which the Claims Commissioner
71 recommended payment of a just claim in an amount exceeding fifty
72 thousand dollars pursuant to subdivision (3) of subsection (a) of
73 section 4-158, as amended by this act, and (2) all claims for which a
74 request for review has been filed pursuant to subsection (b) or (c) of
75 section 4-158, as amended by this act, together with a copy of [his] the
76 Claims Commissioner's findings and of the hearing record of each
77 claim so reported. [The General Assembly may (1) accept or alter any

78 such recommendation or (2) reject any such recommendation and
79 grant or deny the claimant permission to sue the state.]

80 (b) The General Assembly shall:

81 (1) With respect to a decision of the Claims Commissioner ordering
82 the denial of a claim pursuant to subdivision (1) of subsection (a) of
83 section 4-158, as amended by this act:

84 (A) Confirm the decision; or

85 (B) Vacate the decision and, in lieu thereof, (i) order the payment of
86 the claim in a specified amount, or (ii) authorize the claimant to sue the
87 state;

88 (2) With respect to a decision of the Claims Commissioner ordering
89 the immediate payment of a just claim in an amount not exceeding
90 fifty thousand dollars pursuant to subdivision (2) of subsection (a) of
91 section 4-158, as amended by this act:

92 (A) Confirm the decision;

93 (B) Modify the decision by ordering that a different amount be paid;

94 (C) Vacate the decision and, in lieu thereof, (i) order no payment be
95 made, or (ii) authorize the claimant to sue the state;

96 (3) With respect to a decision of the Claims Commissioner
97 recommending payment of a just claim in an amount exceeding fifty
98 thousand dollars pursuant to subdivision (3) of subsection (a) of
99 section 4-158, as amended by this act:

100 (A) Accept the recommendation and order payment of the specified
101 amount;

102 (B) Modify the recommendation by ordering that a different amount
103 be paid; or

104 (C) Reject the recommendation and, in lieu thereof, (i) order no
105 payment be made, or (ii) authorize the claimant to sue the state; or

106 (4) Remand the claim to the Claims Commissioner for such further
107 proceedings as the General Assembly may direct.

108 (c) The General Assembly may grant the claimant permission to sue
109 the state under the provisions of this section when the General
110 Assembly deems it just and equitable and believes the claim to present
111 an issue of law or fact under which the state, were it a private person,
112 could be liable.

113 (d) If the General Assembly orders the payment of a claim, the clerk
114 of the Office of the Claims Commissioner shall deliver to the
115 Comptroller a notice of the order and the Comptroller shall make
116 payment in the manner prescribed for payment of an order of the
117 Claims Commissioner pursuant to section 4-158, as amended by this
118 act.

119 (e) The review by the General Assembly of claims submitted to it by
120 the Claims Commissioner under this section shall be conducted in
121 accordance with such procedures as the General Assembly may
122 prescribe.

123 Sec. 3. Section 4-154 of the general statutes is repealed and the
124 following is substituted in lieu thereof (*Effective October 1, 2003*):

125 [Within] (a) Not later than ninety days after hearing a claim, the
126 Claims Commissioner shall render a decision as provided in
127 subsection (a) of section 4-158, as amended by this act. The Claims
128 Commissioner shall make a finding of fact for each claim and file such
129 finding with the order, [or] recommendation or authorization
130 disposing of the claim. The clerk of the Office of the Claims
131 Commissioner shall deliver a copy of such finding and order, [or]
132 recommendation or authorization to the claimant and to the
133 representative for the state, which representative may in appropriate

134 cases be the Attorney General.

135 (b) If such claim will automatically be submitted to the General
136 Assembly by the Claims Commissioner pursuant to the provisions of
137 subdivision (1) of subsection (a) of section 4-159, as amended by this
138 act, the clerk shall give written notice to the claimant that such claim
139 will be so submitted and that the General Assembly may [accept, alter
140 or reject the recommendation of the Claims Commissioner] confirm,
141 modify or vacate the decision or remand the claim to the Claims
142 Commissioner.

143 (c) If the claimant has the right pursuant to subsection (b) of section
144 4-158, as amended by this act, to request the General Assembly to
145 review the decision of the Claims Commissioner, the clerk shall give
146 written notice to the claimant that the claimant may request the
147 General Assembly to review the decision and that the General
148 Assembly may confirm, modify or vacate the decision or remand the
149 claim to the Claims Commissioner. The notice shall indicate the date
150 by which such a request must be filed with the Office of the Claims
151 Commissioner.

152 Sec. 4. Section 4-160 of the general statutes is repealed and the
153 following is substituted in lieu thereof (*Effective October 1, 2003*):

154 (a) When the Claims Commissioner deems it just and equitable, [he]
155 the Claims Commissioner may authorize suit against the state on any
156 claim which, in [his] the opinion of the Claims Commissioner, presents
157 an issue of law or fact under which the state, were it a private person,
158 could be liable.

159 (b) In any claim alleging malpractice against the state, a state
160 hospital or a sanatorium or against a physician, surgeon, dentist,
161 podiatrist, chiropractor or other licensed health care provider
162 employed by the state, the attorney or party filing the claim may
163 submit a certificate of good faith to the Claims Commissioner in
164 accordance with section 52-190a. If such a certificate is submitted, the

165 Claims Commissioner shall authorize suit against the state on such
166 claim.

167 (c) In each action authorized by the Claims Commissioner pursuant
168 to subsection (a) or (b) of this section or by the General Assembly
169 pursuant to section 4-159, as amended by this act, or 4-159a, the
170 claimant shall allege such authorization and the date on which it was
171 granted, except that evidence of such authorization shall not be
172 admissible in such action as evidence of the state's liability. The state
173 waives its immunity from liability and from suit in each such action
174 and waives all defenses which might arise from the eleemosynary or
175 governmental nature of the activity complained of. The rights and
176 liability of the state in each such action shall be coextensive with and
177 shall equal the rights and liability of private persons in like
178 circumstances.

179 (d) No such action shall be brought but within one year from the
180 date such authorization to sue is granted. With respect to any claim
181 pending before the Claims Commissioner on October 1, 1992, or
182 presented to the Claims Commissioner on or after said date for which
183 authorization to sue is granted, any statute of limitation applicable to
184 such action shall be tolled until the date such authorization to sue is
185 granted. Action shall be brought against the state as party defendant in
186 the judicial district in which the claimant resides or, if the claimant is
187 not a resident of this state, in the judicial district of Hartford or in the
188 judicial district in which the claim arose.

189 (e) Civil process directed against the state shall be served as
190 provided by section 52-64.

191 (f) Issues arising in such actions shall be tried to the court without a
192 jury.

193 (g) The laws and rules of practice governing disclosures in civil
194 actions shall apply against state agencies and state officers and
195 employees possessing books, papers, records, documents or

196 information pertinent to the issues involved in any such action.

197 (h) The Attorney General, with the consent of the court, may
198 compromise or settle any such action. The terms of every such
199 compromise or settlement shall be expressed in a judgment of the
200 court.

201 (i) Costs may be allowed against the state as the court deems just,
202 consistent with the provisions of chapter 901.

203 (j) The clerk of the court in which judgment is entered against the
204 state shall forward a certified copy of such judgment to the
205 Comptroller. The Attorney General shall certify to the Comptroller
206 when the time allowed by law for proceeding subsequent to final
207 judgment has expired and [he] the Attorney General shall designate
208 the state agency involved in the action. Upon receipt of such judgment
209 and certification, the Comptroller shall make payment as follows:
210 Amounts directed by law to be paid from a special fund shall be paid
211 from such special fund; amounts awarded upon contractual claims for
212 goods or services furnished or for property leased shall be paid from
213 the appropriation of the agency which received such goods or services
214 or occupied such property; all other amounts shall be paid from such
215 appropriation as the General Assembly may have made for the
216 payment of claims.

217 (k) [Within] Not later than five days after the convening of each
218 regular session, the Attorney General shall report to the joint standing
219 committee of the General Assembly on the judiciary on the status and
220 disposition of all actions authorized pursuant to this section or section
221 4-159, as amended by this act, or brought against the state under any
222 other provision of law and in which the interests of the state are
223 represented by the Attorney General. The report shall include: (1) The
224 number of such actions pending in state and federal court, categorized
225 by the alleged ground for the action, (2) the number of new actions
226 brought in the preceding year in state and federal court, categorized by
227 the alleged ground for the action, (3) the number of actions disposed of

228 in the preceding year, categorized by the ground for the action that
 229 was disposed of and whether the action was disposed of by settlement
 230 or litigation to final judgment, and the amount paid for actions within
 231 the respective categories, and (4) such other information as may be
 232 requested, from time to time, by the joint standing committee of the
 233 General Assembly on the judiciary. The report shall identify each
 234 action disposed of by payment of an amount exceeding one hundred
 235 thousand dollars.

236 Sec. 5. Section 4-165b of the general statutes is repealed and the
 237 following is substituted in lieu thereof (*Effective October 1, 2003*):

238 (a) Any inmate of any institution of the Department of Correction or
 239 the Department of Children and Families who suffers an injury which
 240 results in a fatality or in a permanent handicap may file a claim against
 241 the state. Such claim shall be heard and decided in accordance with the
 242 provisions of this chapter.

243 (b) Any claim against the state by an inmate of any institution of the
 244 Department of Correction or the Department of Children and Families
 245 that is presented to the Claims Commissioner and is within the
 246 jurisdiction of the Claims Commissioner to hear and determine, may
 247 be referred by the Claims Commissioner to the Chief Human Rights
 248 Referee designated pursuant to section 46a-57. The Chief Human
 249 Rights Referee shall assign a human rights referee appointed pursuant
 250 to section 46a-57 to hear and determine such claim. Such human rights
 251 referee shall have and exercise the powers of the Claims Commissioner
 252 under chapter 53 with respect to the hearing and determination of such
 253 claim. The provisions of chapter 53, adapted accordingly, shall apply
 254 to the hearing and determination of a claim by a human rights referee
 255 under this section and any review of such claim by the General
 256 Assembly.

257 Sec. 6. (NEW) (*Effective October 1, 2003*) The Commissioner of
 258 Correction shall establish a lost property board within the Department
 259 of Correction to hear and determine any claim by an inmate of a

260 correctional facility who seeks compensation not exceeding three
261 thousand five hundred dollars for lost or damaged personal property.
262 The board shall hear and determine each such claim and may, if it
263 determines the claim is one which in equity and justice the state should
264 pay, award damages. If the board denies a claim in whole or in part,
265 the inmate may, not later than sixty days after such decision, present
266 the claim to the Claims Commissioner in accordance with section 4-147
267 of the general statutes. The filing of a claim with the lost property
268 board shall toll the time limit for presenting a claim to the Claims
269 Commissioner pursuant to section 4-148 of the general statutes. The
270 Commissioner of Correction shall adopt regulations, in accordance
271 with chapter 54 of the general statutes, to implement the provisions of
272 this section.

273 Sec. 7. Section 4a-20 of the general statutes is repealed and the
274 following is substituted in lieu thereof (*Effective October 1, 2003*):

275 The State Insurance and Risk Management Board shall determine
276 the method by which the state shall insure itself against losses by the
277 purchase of insurance governed by the provisions of title 38a to obtain
278 the broadest coverage at the most reasonable cost. It shall direct the
279 negotiations for purchase of such insurance and determine whether
280 deductible or other risk retention provisions should be included in the
281 insurance contract. Wherever appropriate it shall determine that the
282 state shall act as a self-insurer and may request funds from the
283 contingency fund to establish reserves and carry out such practices as
284 are necessary to safeguard the self-insurance activity. Said board may
285 develop and implement risk management and loss prevention
286 programs related to insurance plans established pursuant to the
287 provisions of sections 4a-19 to 4a-21, inclusive, and may recommend to
288 the Governor and the General Assembly the enactment of policies
289 designed to reduce risks and hazards that may result in state liability
290 for tortious conduct. It shall designate the agent or agents of record
291 and shall select the companies from whom insurance coverage and
292 surety bonds shall be purchased. Notwithstanding any other provision

293 of the general statutes, including without limitation sections 38a-707
 294 and 38a-825, it shall have full authority to negotiate either a
 295 commission or fee structure to compensate the agent or agents of
 296 record for services performed. It shall also have full authority to retain
 297 consulting firms and to negotiate their fee compensation for services
 298 performed. Any refund, dividend or other payment from any
 299 insurance company in connection with insurance for the state shall be
 300 returned to the Comptroller for deposit in the General Fund. The
 301 board shall establish specifications for each contract of insurance and
 302 shall request bids for each such contract through the agent of record.
 303 Each such contract shall be for a specified period of time.

304 Sec. 8. Section 4a-21 of the general statutes is repealed and the
 305 following is substituted in lieu thereof (*Effective October 1, 2003*):

306 [Said board] The State Insurance and Risk Management Board shall,
 307 on or before September first, annually, make a report to the Governor
 308 and the joint standing committee of the General Assembly on the
 309 judiciary of its activities during the year ending the preceding June
 310 thirtieth. Such report shall include (1) an evaluation of the state
 311 insurance program in terms of adequacy and reasonableness of cost,
 312 (2) a complete statement of the costs of said program enumerating
 313 lines of coverage, (3) an evaluation of the effectiveness of each portion
 314 of the program involving deductibles or partial self-insurance, (4) a
 315 statement of the agent or agents of record, or consultants, if any, (5) an
 316 evaluation of the agent or agents of record, or consultants, if any, (6) a
 317 breakdown of the actual commissions or fees paid, (7) any
 318 recommendations adopted by the board for the enactment of policies
 319 designed to reduce risks and hazards that may result in state liability
 320 for tortious conduct, (8) the status and disposition of claims
 321 administered through the state insurance program, and [(7)] (9) such
 322 other matters as the board determines to be appropriate and necessary.
 323 The portion of the report concerning the status and disposition of
 324 claims shall include (A) the number of claims pending under the state
 325 insurance program, categorized by the alleged ground for the claim,

326 (B) the number of new claims brought under the state insurance
 327 program in the preceding year, categorized by the alleged ground for
 328 the claim, (C) the number of claims disposed of in the preceding year,
 329 categorized by the ground for the claim that was disposed of and
 330 whether the claim was disposed of by settlement or litigation to final
 331 judgment, and the amount paid for claims within the respective
 332 categories, and (D) such other information within the cognizance of the
 333 board as may be requested, from time to time, by the joint standing
 334 committee of the General Assembly on the judiciary. The report shall
 335 identify each claim disposed of by payment of an amount exceeding
 336 one hundred thousand dollars. Each such report shall become a public
 337 record.

338 Sec. 9. (*Effective from passage*) (a) Notwithstanding the failure to file a
 339 proper notice of a claim against the state with the clerk of the Office of
 340 the Claims Commissioner, as required by section 4-147 of the general
 341 statutes, within the time limitations specified by subsection (a) of
 342 section 4-148 of the general statutes, and notwithstanding the
 343 provisions of subsection (c) of said section 4-148 barring the
 344 presentment of a claim once considered by the Claims Commissioner,
 345 by the General Assembly or in a judicial proceeding, Faye A. Philbrick
 346 is authorized pursuant to the provisions of subsection (b) of said
 347 section 4-148 to present her claim against the state to the Claims
 348 Commissioner. The General Assembly deems such authorization to be
 349 just and equitable and finds that such authorization is supported by
 350 compelling equitable circumstances and would serve a public purpose.

351 (b) The state shall be barred from setting up the failure to comply
 352 with the provisions of sections 4-147 and 4-148 of the general statutes,
 353 from denying that notice of the claim was properly and timely given
 354 pursuant to sections 4-147 and 4-148 of the general statutes and from
 355 setting up the fact that the claim had once been considered by the
 356 Claims Commissioner, by the General Assembly or in a judicial
 357 proceeding as defenses to such claim.

358 Sec. 10. Subsection (a) of section 52-50 of the general statutes is
 359 repealed and the following is substituted in lieu thereof (*Effective*
 360 *October 1, 2003*):

361 (a) All process shall be directed to a state marshal, a constable or
 362 other proper officer authorized by statute, to a corporation, limited
 363 liability company, partnership or other legal entity engaged in the
 364 business of serving process in this state or, subject to the provisions of
 365 subsection (b) of this section, to an indifferent person. A direction on
 366 the process "to any proper officer" shall be sufficient to direct the
 367 process to a state marshal, constable or other proper officer or to an
 368 employee or agent of a corporation, limited liability company,
 369 partnership or other legal entity engaged in the business of serving
 370 process in this state.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>
Sec. 7	<i>October 1, 2003</i>
Sec. 8	<i>October 1, 2003</i>
Sec. 9	<i>from passage</i>
Sec. 10	<i>October 1, 2003</i>

Statement of Purpose:

To adopt the recommendations of the Law Revision Commission for the revision of the procedures for the hearing and determination of claims against the state, to authorize Faye A. Philbrick to present her claim against the state to the Claims Commissioner for a hearing on the merits and to authorize process to be served by employees and agents of a company engaged in the business of serving process in this state.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]